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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/930,702 02/13/98 WETZEL

T CPW50075/US

HM22/0630
PATENT & TRADEMARK ADMINISTRATOR
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EXAMINER

SEIDLECK, B

ART UNIT	PAPER NUMBER
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1615

DATE MAILED:

06/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/930,702

Applicant(s)
Wetzel et al.

Examiner
Brian K. Seidleck

Group Art Unit
1615



☒ Responsive to communication(s) filed on May 15, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 24-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 24-34 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Continued Prosecution Application

1. The request filed on 5/15/2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/930,702 is acceptable and a CPA has been established. An action on the CPA follows.

Papers Received

2. Receipt is acknowledged of applicant's preliminary amendment filed on 5/15/2000. Claims 24-34 are pending.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

4. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Objections

5. Claims are objected to because of the following informalities: it is requested that .

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 33 recites the limitation "surfactant composition" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is requested that applicant recite "foaming surfactant".

8. Claim 32 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim uses improper Markush language ("and/or"). See MPEP § 2173.05(h). The alternative expressions used by the applicant present uncertainty and ambiguity. The applicant is requested to use the following language: "selected from the group consisting of A, B, and C."

Claim Rejections - 35 U.S.C. § 103

9. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 24-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hague et al (5,543,074, hereinafter "Hague"); and/or Unilever (EP 0 485 212 A1); and in further view of France et al (U.S. Pat. No. 4,198,311, hereinafter "France").

Hague teaches a composition suitable for cleansing and conditioning of the skin or hair. See Col. 2, lines 21-24. As to the ingredients, Hague recites a isethionate surfactant (Col. 4, lines 66-67); sulphosuccinate (Col. 5, lines 12-17); fatty alcohol (Col. 3, lines 45-47); zantham gum (Col. 4, lines 45-49); and silicone oils (Col. 3, lines 38-40). The surfactant component is present in an amount of 2 to 40% and the balance of water for the dispersion overlaps that of the present invention. See Col. 8, lines 15-40. The dispersion is formed by adding the surfactant composition to water at 50°C. *Id.*

Hague is silent as to the state (i.e. solid, liquid or semi-solid) of the surfactant portion, prior to its combination with the remaining ingredients (oil and water). However, it is noted that the present manufacturing examples at pages 10-11 (i.e. method 3), disclose an initial solid surfactant mixture/blend, but the solid is then heated to a *liquid state before*, the oil and water additives are added. Further, France teaches that cleansing surfactants are commercially available in solid or semi-solid form, including flakes. See Col. 5. Therefore, in the absence of unexpected results, one of ordinary skill in the art would have motivated to use a liquid form or solid form of

a cleansing surfactant, since each are commercially available and interchangeable. One of ordinary skill would have been motivated to first dissolve the flaked surfactant prior to its addition to the remaining ingredients to ensure a homogenous mixture.

Similarly, Unilever teaches a personal foaming composition, comprising isethionates, sulphosuccinate, fatty alcohols, silicone oils, and polyethylene glycols. See pages 2-5. As to the present method claims, wherein the pre-formed surfactant portion is made, Unilever teaches that pre-mixes of the components may be made for purposes of convenience. See page 4. The applicants, in their response argue that the present method results in easier formulation, and therefore is patentably distinguishable over the prior art. However, it is the examiner's position that Unilever's statement regarding pre-mixing for convenience, renders applicants method obvious. It is the examiner's position that one of ordinary skill in the art would have been motivated to pre-mix certain components for purposes of convenience and that such practice is routine in the art, and thereby obvious, absent a showing of criticality.

Further, as stated above, France teaches that cleansing surfactants are commercially available in solid or semi-solid form, including flakes. See Col. 5. Therefore, in the absence of unexpected results, one of ordinary skill in the art would have motivated to use a liquid form or solid form of a cleansing surfactant, since each are commercially available and inter-changeable. One of ordinary skill would have been motivated to first dissolve the flaked surfactant prior to its addition to the remaining ingredients to ensure a homogenous mixture.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Brian K. Seidleck** whose telephone number is **(703) 305-4448**. The examiner can normally be reached **Monday, Tuesday, Thursday and Friday from 6:30am to 5:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Thurman K. Page**, can be reached on **(703) 308-2927**. The official fax numbers for Technology Center 1600 are **(703) 305-3592** and **(703) 308-4556**. The unofficial fax number is **(703) 308-7921**.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. § 132 or which otherwise require a signature, may be used by the applicant and should be addressed to **[thurman.page@uspto.gov]**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of confidentiality requirements of U.S.C. § 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center receptionist** whose telephone number is **(703) 308-1235** or **(703) 308-1234**.

Brian K. Seidleck
Patent Examiner
June 19, 2000

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600